REMARKS/ARGUMENTS

Claims 1-14 stand rejected in the outstanding Official Action. Claims 1, 9 and 11 have been amended and therefore claims 1-14 remain in this application.

Interview conducted February 23, 2006

The interview conducted between Applicants' undersigned representative and SPE Darren Schuberg on February 23, 2006 is very much appreciated. In view of the apparent lack of any prior art disclosing Applicants' claimed entrainment of a gas into a liquid fluid flow, SPE Schuberg indicated that the Final Rejection would be vacated and a new Official Action forwarded. During the interview, it was agreed that Applicants would consider deleting the last phrase in claim 1 directed to "practical bubble size," with the SPE contending that that phrase was indefinite although the rejection had not been previously raised. The present amendment modifies claim 1 in that fashion and also modifies claims 9 and 11 to remove several artifacts which resulted from the initial scanning of these claims. Accordingly, claims 1-14 remain in this application.

Claim 1 stands rejected under 35 USC §112 (second paragraph) as being indefinite. As noted above, the phrase "the size of each of the plurality of entrainment outlets being that of a practical bubble size" has been deleted from claim 1, thereby obviating any further rejection of claim 1 under 35 USC §112 (second paragraph).

Claims 1-7 and 12-14 stand rejected under 35 USC §103 as allegedly being unpatentable over Hassard (U.S. Patent 6,568,181). On page 3 of the Official Action, the Examiner positively states that Hassard discloses a structure which causes "the transmission fluid to be drawn through the conduit exiting the conduit via a plurality of entrainment outlets (end portion of 20s see

Fig. 4) to become inherently entrained in the fluid flow . . . ." (emphasis added). This allegation is respectfully traversed, as Hassard contains no such teaching and in fact teaches away from any gas flow being entrained in a liquid flow.

A. Hassard contains no teaching of entraining a gas in a liquid fluid flow

Applicant has repeatedly requested that the Examiner indicate where or how the cited prior art teaches entrainment of a gas in a liquid fluid flow. Hassard specifically states that a liquid (not a gas) flow is entrained in the liquid flow ("if water is allowed to flow down the pipe 30, . . ." (column 4, lines 64-65) and "such that water is sucked from a full tank 90 through the conduit 30 into the channel 20" (column 7, lines 28-29). There is no disclosure in Hassard, nor has the Examiner identified any disclosure, which suggests that a gas is entrained within the liquid fluid flow as set forth in Applicants' independent claim 1 and all other claims depending thereon.

Thus, because there is no disclosure of Applicants' claimed interrelationship between elements, i.e., the "entrainment outlets" and the interconnection such that "said transmission fluid exiting the conduit via a plurality of entrainment outlets to become entrained in the fluid flow," (emphasis added) Hassard does not disclose this claimed structure and structural interrelationship and therefore cannot disclose or render obvious the subject matter of Applicants' claims.

B. Lacking a teaching in Hassard, the Examiner must resort to an "inherency" argument

The Examiner, apparently recognizing the lack of any teaching of entrainment of a gas within a liquid in the Hassard reference, suggests that it is "inherently entrained in the fluid flow." However, this contention is respectfully traversed as well. Hassard specifically teaches that with respect to the embodiment of Figure 8, the selector valve 100 switches when water is

sucked from a full tank so that water is continually sucked from the two tanks with the valve alternating between an empty and a full tank ("when this tank 90 is empty of water and full of air, the valve 100 switches such that the other tank 91 that is full of water becomes connected to the conduit and water is sucked from this other tank 91." Column 7, lines 31-34).

There is nothing inherent about a gas being sucked from the tank, especially where the tank is specifically blocked (by valve 100 as discussed at column 7, lines 25-35) from anything but liquid being sucked from the tank into the conduit 30 and then into channel 20. Because Hassard specifically teaches away from any entrainment of a gas within a liquid, there can be no inherent disclosure of such in the Hassard reference and the Examiner's continued rejection thereunder is respectfully traversed.

The SPE in the telephone interview suggested that Figure 3 of Hassard possibly taught air being entrained in the water flow. Applicant's undersigned representative pointed out that the intake of conduit 30 was located beneath the surface of the water ("a pipe 30 from the surface of the sea . . . then passes back into the sea." Column 4, lines 57-60).

Again, it is requested that should the Examiner believe Hassard to contain any disclosure of a gas being entrained in a liquid fluid flow, he is respectfully requested to point out where that teaching is contained in either the Hassard reference or any reference of record in this application.

Additionally, the Examiner is requested to avoid arguing that such disclosure is "inherent" unless the Examiner has a reference which specifically discloses such inherency. Applicants respectfully traverse the current inherency argument under the provisions of the Manual of Patent Examining Procedure (MPEP) Section 2144.03. As required by the MPEP,

where "the applicant traverses such an assertion, the examiner should cite a reference in support of his or her position." The Examiner has simply failed to disclose any prior art which teaches Applicants' claimed gas-in-liquid entrainment, let alone the combination of elements which serves to extract power from a fluid flow as set out in Applicants' claims.

The Examiner contends that claims 8-11 are obvious under 35 USC §103 over the Hassard reference in combination with Miller (U.S. Patent 5,071,548). Inasmuch as claims 8-11 ultimately depend from claim 1, the above comments distinguishing claim 1 from the Hassard reference are herein incorporated by reference.

While the Examiner cites Miller for teaching a heat exchanger, the Examiner does not allege that Miller teaches gas entrainment in a liquid fluid flow or any structure or interrelationship between structures for accomplishing this claimed function. In view of the Examiner's failure to even allege that Miller teaches the interrelationship of a gas being entrained in a liquid fluid flow, even if Hassard and Miller were combined, there is no disclosure of Applicants' claimed invention, either in claim 1 or in claims 8-11. Consequently, any further rejection of claims 8-11 over the Hassard/Miller combination is respectfully traversed.

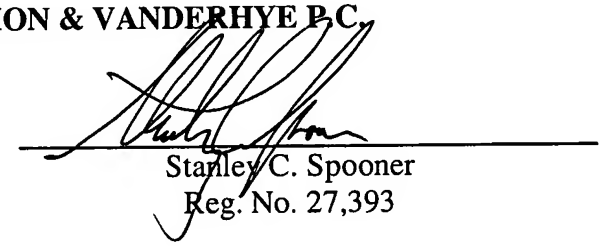
Moreover, even if all claimed structures were disclosed somewhere in either the Hassard or Miller references, in order to combine those references, it is incumbent upon the Examiner to establish some "reason" or "motivation" for combining references. Here, as noted above, Hassard specifically teaches away from any gaseous entrainment in a liquid fluid flow (the water entrained in water of Figure 3 and the valve 100 preventing air entrainment in Figure 8). Miller is silent (or at least the Examiner does not allege any disclosure in Miller) on this alleged teaching and therefore there is no reason for one of ordinary skill in the art to combine the

Hassard and Miller references. Should the Examiner believe there to be a disclosure of Applicants' claimed structural interrelationship or some "reason" or "motivation" for combining the Hassard and Miller references, he is respectfully requested to identify where such structure or structural interrelationship is shown and why there is some reason or motivation for combining references.

Having responded to all objections and rejections set forth in the outstanding Official Action, it is submitted that claims 1-14 are in condition for allowance and notice to that effect is respectfully solicited. In the event the Examiner is of the opinion that a brief telephone or personal interview will facilitate allowance of one or more of the above claims, he is respectfully requested to contact Applicants' undersigned representative.

Respectfully submitted,

NIXON & VANDERHYE P.C.

By: 

Stanley C. Spooner
Reg. No. 27,393

SCS:kmm
901 North Glebe Road, 11th Floor
Arlington, VA 22203-1808
Telephone: (703) 816-4000
Facsimile: (703) 816-4100